

**REMARKS**

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks.

**Status of Claims**

Claims 1-31, 34-38 and 40-59 are pending in the present application, of which claims 1, 23, 30, 34, 35, 38, 42, 43, 44 and 52 are independent. Claims 32-33 and 39 have been cancelled without prejudice or disclaimer of the subject matter contained therein.

By virtue of the amendments above, claims 1, 2, 4, 5, 8, 12, 13, 17-31, 34, 38, 40, 43-45, 50, 52-56, 58 and 59 are amended. Support for the amendments can be found at least in Figs. 3-6 and paragraphs [0047]-[0063] of the specification. No new subject matter has been introduced by the amendments above.

**Double Patenting**

Claim 34 was rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over Claim 36 of U.S. Patent No. 7,106,204. A terminal disclaimer will be submitted when the application is in condition for allowance.

**Claim Rejection under 35 U.S.C. §112**

Claim 9 was rejected under 35 U.S.C. §112, second paragraph for having insufficient antecedent basis for “the observer.” In response, claim 1, upon which claim

9 depends, has been amended to recite an observer in order to provide proper antecedent basis for the observer in claim 9. It is respectfully submitted that the rejection of claim 9 under 35 U.S.C. § 112, second paragraph has been overcome and the rejection should be withdrawn.

**Claim Rejection under 35 U.S.C. §102**

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

**Claims 30-32**

Claims 30-32 were rejected under 35 U.S.C. 102(e) as allegedly being anticipated by Fedorovskaya (US 2004/0101178). At least in view of the amendments above, the rejection is respectfully traversed for the following reasons.

Independent claim 30 is directed to a method for capturing an image of a first animate object by a host wearer. Claim 30 recites: “detecting at least one attention signal of the first animate object toward the host wearer, in response to a detectable body parameter of the first animate object; analyzing said at least one attention signal to determine an interest level of said first animate object” (emphasis added).

Fedorovskaya fails to teach or suggest at least these features.

Fedorovskaya discloses a system and method for capturing an image when the user of a camera changes his (or her) physiological or behavioral conditions. For example, the Fedorovskaya camera takes a picture when the user suddenly sees a dangerous accident or an amazing action which causes a change in his heart rate, skin reaction, or facial expressions (see paragraph [0036]). In other words, in Fedorovskaya, the system takes a picture based solely on the reaction of the user of the camera. The system of Fedorovskaya does not detect and analyze any attention signal that an “animate object” has towards the host, as recited in claim 30.

In the rejection, the Examiner contends that the physiological responses in paragraph [0049] of Fedorovskaya performs the “detecting” step recited in claim 30. However, the physiological responses are of the camera user, not of the “animate object” that the user is looking at. The Examiner also contends that step 440 of Fig. 5b performs the “analyzing” step of claim 30. However, step 440 is a criterion step based on the excitement of the camera user, not on the interest level of the “animate object” (see Fig. 5b, steps 436 and 438). Nowhere in the disclosure does Fedorovskaya teaches that the camera detects and analyzes an attention signal of an animate object toward the user, as recited in claim 30.

Therefore, Fedorovskaya fails to teach and suggest each and every feature recited in claim 30. As such, it is respectfully submitted that claim 30 and its dependent claim 31 are allowable over Fedorovskaya. Withdrawal of the rejection of claims 30-31 under 35 U.S.C. 102(e) over Fedorovskaya is therefore respectfully requested.

**Claims 34 and 42**

Claims 34 and 42 were rejected under 35 U.S.C. 102(e) as allegedly being anticipated by Zellner et al. (US 6,567,502, “Zellner”). At least in view of the amendments above, the rejection is respectfully traversed for the following reasons.

Independent Claim 34 is directed to an image capture device comprising, among other elements, “a transponder device for receiving activation signals from a remote source” and “an attention detection component for detecting an attention signal of a host wearer from a self perspective and the activation signals from the remote source” wherein the attention detection component analyzes the activation signals and said attention signal to activate the image capture device to capture an image. Zellner fails to teach or suggest such an image capture device.

Zellner discloses in Fig. 4, an emergency service center where the emergency service center 14 (“ESC 14”) can make a telephone call to a user who wears a “remote device” 37 by sending a message through a carrier network 16 and a host telephone device 41. The remote device 37 monitors the condition, such as heart rate and blood pressure, of the user who wears the remote device 37 (see columns 7 and 8). The remote device 37 may also have a digital camera to capture and transmit video data from the user to the ESC 14 (see top of column 8). However, claim 34 recites that the

transponder device receives “activation” signals from a remote source, which help activate the image capture device to capture an image. In Zellner, the phone call from the ESC 14 does not activate the camera in the remote device 37. Moreover, nowhere in Zellner suggests that the camera is triggered by a signal from the ESC 14. Therefore, the phone call from the ESC 14 is not qualified as the “activation” signals recited in claim 34.

In the rejection of claim 34, the Examiner asserts “the remote center ESC 14 can activate a camera to monitor the user or user’s surroundings; col. 8, lines 2-6.” It is respectfully submitted that such an assertion is incorrect because col. 8, lines 2-6 merely mentions that the remote device 37 may include a digital camera to capture video data. Col. 8, lines 2-6 does not teach or suggest that the camera is activated by the phone call from the ESC 14.

In view of the discussions above, it is respectfully submitted that Zellner fails to anticipate claim 34. Therefore, the withdrawal of the rejection of claim 34 under 35 U.S.C. 102(e) based upon Zellner is respectfully requested.

Claim 42 recites a computer readable storage medium analyzing sensor signals that represent attention clues from a first animate object toward a second animate object and attention clues from the second animate object toward the first animate object, and generating a trigger signal to capture an image data. Zellner fails to teach or suggest such a storage medium. In Zellner, the ESC 14 receives a signal from the remote device 37 and sends a phone call to the device 37. However, Zellner does not have a computer readable storage medium that would analyze sensor signals both ways, i.e., from the ESC 14 to the remote device 37 and from the remote device 37 to the ESC 14. In

addition, as discussed above, Zellner fails to teach or suggest that the camera is triggered by the phone call from the ESC 14.

At least for the reasons set forth above, it is submitted that claim 42 is allowable over Zellner. Withdrawal of the rejection of claim 42 under 35 U.S.C. 102(e) based upon Zellner is requested.

**Claims 38, 40, 41, 43, 44 and 52**

Claims 38, 40, 41, 43, 44 and 52 were rejected under 35 U.S.C. 102(e) as allegedly being anticipated by Pflieger (US 6,997,556). The rejection is respectfully traversed for the following reasons.

- **Claims 38, 40 and 41**

As amended, independent claim 38 recites: “an observer perspective attention analyzer for analyzing attention clues of the observer toward the host wearer from an observed perspective of the host wearer.” Pflieger fails to teach and suggest such an analyzer.

Pflieger teaches in Figs. 1 and 2 a method for detecting and analyzing look sequences of a user of a look detecting system. The look detecting system includes a first camera (1) attached to the user’s head to videotape the view in front of the user (see Abstract). The system also includes a second camera (2) placed in front of the pupil of the user’s eye to detect the movement of the pupil and videotape the exact view of the user’s eye (see Abstract). The video from the second camera (2) and the video from the first camera (1) are then coordinated to determine the looking behavior of the user as a function of, for example, age or physical state (see col. 4, lines 48-52). Thus, the first

and second cameras (1 and 2) of Pfleger point to the same direction and examine the same point of view from the user's face. As a result, neither the first camera (1) nor the second camera (2) is the "observer perspective attention analyzer" recited in claim 38 because neither camera (1 or 2) analyzes the attention clues of an "observer" toward the user, wherein the observer is an animate object that the user is looking at. Thus, Pfleger fails to teach or suggest every feature recited in claim 38. Therefore, it is respectfully submitted that claim 38 and its dependent claims 40 and 41 are allowable over Pfleger.

- **Claim 43**

Independent claim 43 recites an attention detection system comprising: an "attention detector" for receiving attention clues from a host wearer toward an observer, and "an animate object observing device" for observing the host wearer from the observer and determining attention clues of the host wearer from the observer's perspective. Pfleger fails to teach and suggest those features.

In the rejection of claim 43, the Examiner contends that the second camera (2) of Pfleger is the "animate object observing device." However, as discussed above, in Pfleger, both cameras (1 and 2) point to the same direction in front of the user's face. In other words, both cameras (1 and 2) are interested in the same view. The second camera (2) is not from an observer's view toward the user. Therefore, the second camera (2) of Pfleger is not the "animate object observing device" for observing the host wearer from the observer, as recited in claim 43.

In addition, the first camera (1) of Pfleger simply videotapes the view in front of the user's face. The first camera (1) is not related to the attention of the user. Therefore, the first camera (1) of Pfleger cannot be called the "attention detector"

recited in claim 43. Similarly, the second camera (2) of Pfleger follows the pupil of the user and simply videotapes the view of the pupil. The second camera (2) does not make any determinations. Therefore, the second camera (2) does not have the function of “determining attention clues of said host wearer from said observer perspective” of the “animate object observing device” recited in claim 43. As a result, the second camera (2) cannot be the “animate object observing device” recited in claim 43.

In view of the foregoing discussions, it is respectfully submitted that claim 43 is allowable over Pfleger.

- **Claims 44 and 52**

Claim 44 recites a “second sensor for generating a second signal relating to the attention level toward the first animate object from a perspective of the second animate object.” Claim 52 recites a method having a “second sensor” similar to that of claim 44. The “second sensor” recited in claims 44 and 52 is similar to the “animate object observing device” of claim 43. Therefore, it is respectfully submitted that claims 44 and 52 are allowable over Pfleger for the same reasons set forth above for claim 43.

**Claim Rejection under 35 U.S.C. §103**

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007):

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the



circumstances surrounding the origin of the subject matter sought to be patented.” Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, “[a]ll claim limitations must be considered” because “all words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

(A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness.”

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

**Claims 1-3, 5-6, 8, 10 and 16-22:**

Claims 1, 3, 5-6, 8, 10, 16 and 18 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Pfleger (US 6,997,556).

Claim 2 was rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Pfleger in view of Mann (Humanistic Computing: “WearComp” as a New Framework and Application for Intelligent Signal Processing, Proceedings of the IEEE, Vol. 86, pp. 2123-2151, 1998).

Claims 17 and 19-22 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Pfleger in view of Fedorovskaya.

The rejections are respectfully traversed for the following reasons.

Independent claim 1 recites a second sensor device located at the observer for generating a signal related to the attention of the observer to the host wearer. This second sensor is similar to the “animate object observing device” of claim 43. Therefore, claim 1 is allowable over Pfleger for the same reasons set forth above.

Claims 2-3, 5-6, 8, 10 and 16-22 are dependent from claim 1. Thus, claims 2-3, 5-6, 8, 10 and 16-22 are allowable over Pfleger for at least the same reasons as claim 1.

Moreover, claim 2 was rejected based on Pfleger in view of Mann. As stated in the rejection, Mann teaches a method for capturing images in response to a determined situation of raised attention. However, Mann fails to teach or suggest a “second sensor

device” located at the observer for generating attention clues indicative of the attention of the observer to the camera user, as recited in claim 1. Therefore, Mann fails to cure the deficiencies of Pfleger. Thus, the proposed combination of Pfleger and Mann fails to establish a prima facie case of obviousness against claim 2. Claim 2 thus is allowable over Pfleger in view of Mann.

Claims 17 and 19-22 were rejected based on Pfleger in view of Fedorovskaya. However, as discussed above, the camera in Fedorovskaya takes a picture when the camera user changes his physiological or behavior condition. Fedorovskaya does not have a “second sensor device” located at the observer (as opposed to the camera user) and generating an attention signal indicative of the attention of the observer to the camera user, as recited in claim 1. Therefore, Fedorovskaya fails to cure the deficiencies of Pfleger. Thus, the proposed combination of Pfleger and Fedorovskaya fails to establish a prima facie case of obviousness against claims 17 and 19-22. Claims 17 and 19-22 thus are allowable over Pfleger in view of Fedorovskaya.

**PATENT**

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**Conclusion**

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below.

Please grant any required extensions of time and charge any fees due in connection with this request to Deposit Account No. 08-2025.

Respectfully submitted,

Dated: April 15, 2009

By



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